PERAK HANJOONG SIMEN SDN BHD

v.

PERINDUSTRIAN TENAGA MIX SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ROHANA YUSUF J
[SUIT NO: D4-22-604-2006]
11 MARCH 2008

LEGAL PROFESSION: *Conflict of interest - Professional conduct - Counsel acting for defendant earlier acted for plaintiff - Whether exists conflict of interest - Whether counsel a potential witness in respect of material and disputed question of facts - Legal Profession Act 1976, s. 94(3) - Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 4, 5, 28(a)*

CIVIL PROCEDURE: *Appeal - Decision of senior assistant registrar - Whether appealable - Rules of the High Court 1980, O. 56 r. 1*

The defendant appealed against the decision of the senior assistant registrar ('SAR') who allowed the plaintiff's preliminary objection against one Messrs Tee & Partners, the legal firm representing the defendant, on the ground of conflict of interest. The said firm was a sole proprietorship under one Mr Tee who had earlier acted for the plaintiff in the preparation and drafting of a settlement agreement between the same parties herein. The plaintiff raised a preliminary issue, *ie*, that the SAR ruling was not appealable as it did not constitute a decision that could be appealed from as stipulated under s. 3 of the Courts of Judicature Act 1964.

Held (dismissing the appeal):

(1) Under O. 56 r. 1 of the Rules of the High Court 1980, "an appeal shall lie to a judge in chambers from any judgment, order or decision of the registrar." The terms "judgment, order or decision" were not qualified to only decisions that could dispose of the rights of parties. Therefore the decision of the SAR was appealable under O. 56 r. 1. Furthermore, an appeal to a judge in chambers was a rehearing and was treated as though it came before the court for the first time as decided in the Federal Court case of *Tuan Haji Ahmed Abdul Rahman v. Arab-Malaysian Finance Berhad*. More importantly, the SAR's

A decision related to the right to consult and be defended by a legal practitioner of choice, which was a right granted by art. 5(3) of the Federal Constitution. (paras 3 & 4)

(2) The plaintiff's concerns were valid. It was quite conceivable B that Mr Tee as the former solicitor would have been privy to and would have acquired confidential information in that assignment. The plaintiff's claim in the present suit was predicated on that same settlement agreement. Potentially Mr Tee might have to be called as a witness for the plaintiff in C the dispute over that agreement. (para 9)

(3) Rule 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 prohibited counsel to act in a case where he would be a potential witness of material dispute of facts. Based on the facts herein, Mr Tee was involved in arriving at D a settlement agreement that he drafted and advised the plaintiff on. Mr Tee's role in the settlement agreement would in all probability potentially make him a witness of material and disputed facts. It followed that this was a case in which "an advocate and solicitor has reason to believe that he will be a E witness in respect of a material and disputed question of fact" under the first limb of r. 28(a). (paras 10, 13 & 14)

(4) Mr Tee was a sole proprietor and could not defend himself on the basis of the case *Re a Firm of Solicitors*. That case F involved a big firm of solicitors in a substantial suit on an international patent litigation in the Unites States. It was established in evidence that, although confidential information was available to the counsel when he was with the firm that represented the plaintiff, none of the information had been G communicated to him. He was not the counsel handling the case in question. He later moved to a new firm at the point he represented the defendant. The court in that case observed and attached weight to the evidence of the solicitor who testified on oath that he had no knowledge of the subject H matter of the suit nor had he received any confidential information for the same. It was in those circumstances that the court refused injunctive relief. It was also in those circumstances that the court required the plaintiff to prove the passing of information and to establish real risk on evidence. I It followed that Mr Tee was in no position to testify that no confidential information had passed to him in the same way as the solicitor did in that case. (paras 16 & 17)

(5) When s. 94 of the Legal Professions Act 1976 empowers the disciplinary board to strike a solicitor off the Rolls for misconduct, s. 94(3) defines misconduct to include "disregard of a solicitor's client's interest". Mr Tee was faced with a situation in which he had to choose between the conflicting interest of his former client and his present client. (para 20)

(6) In the face of the clearly worded rr. 3, 4 and 5 of the Legal Profession (Practice and Etiquette) Rules 1978, it was difficult to imagine how Mr Tee had not run foul of any of their provisions. The said rules were clear on the point and were designed to prevent a situation of conflict of interest. They were not intended to give some technical interpretation as to whether the prohibitions in those rules were only in respect of accepting briefs or actually appearing in court. It would not matter that it referred to accepting briefs only. The intention was crystal clear. A conflict of interest situation must be avoided. Professionalism and dignity of the profession must be maintained. (para 22)

(7) The defendant did not insist on the right to counsel of its choice for the same reasons as stated in the case of *Rhina Bhar v. Malaysian Bar* or for any other good reason. In that case, the learned judge carefully weighed the interest of the plaintiff and her right to counsel of her choice. He held that as a general rule a solicitor who was a member of a public authority should not be professionally engaged in proceedings to which the authority was a party. According to him, the Bar Council was not directly involved in the case as it did not intervene in the proceedings at the High Court. Furthermore, the plaintiff stated on oath that it was impossible for her to find an alternative counsel of standing to present her appeal and it would therefore cause her great hardship if the court allowed the objection to her counsel at the appeal stage. That was true since the Bar Council did not raise any objection in the court of first instance. Having weighed and balanced the interest of the Bar Council with that of the plaintiff, the learned judge found that the plaintiff would be seriously prejudiced if denied the counsel of her choice at that stage as it involved her whole career. The plaintiff's right to counsel of her choice was then given precedence. In the present case, there was no evidence that the defendant could not find

A another counsel to handle the matter, given that the plaintiff had raised the objection from the very beginning. (paras 23 & 24)

(8) The underlying objective of the guaranteed right to counsel
B under art. 5 of the Federal Constitution is to ensure fair trial to parties. Such objective could not be achieved if the defendant was insistent upon its right to counsel of its choice in the present situation. (para 25)

C **(9)** This was plainly a case on conflict of interest. It disturbed the court to see this happening in the legal profession. Even worse, the matter was being brought before the court for unnecessary adjudication. If the said Practice and Etiquette Rules were given due considerations to its true intendment both in their form and substance, Mr Tee would surely be
D able to appreciate the gravity of the objections raised by the plaintiff. Even without those rules, basic conscience, professionalism, integrity and common sense would dictate that it was wrong for the counsel to have conducted himself in the manner that he did. Avoiding a conflict of interest is expected
E in every profession but even more so in a profession that is sworn to uphold justice. (para 26)

Obiter:

F **(1)** In the wake of calls for judicial reforms by the Bar Council and other interested parties that grace our local media almost everyday, the least that one can expect is for each and every member of the Bar to strive to do his or her utmost to boost the confidence of the public in the system of justice in this
G country. Since their conduct also shapes how the public perceives the system of justice in the country, they should adhere to the highest standards of ethics. Otherwise, calls for judicial reform from the legal profession would lack credibility and may ring hollow with hypocrisy. (para 28)

H **Case(s) referred to:**

Aetna Universal Insurance Sdn Bhd v. Ooi Meng Sua [2001] 3 CLJ 1 CA ***(refd)***

Emperor v. Dadu Ramu AIR [1939] Bom 150 I ***(refd)***

PP v. N Vengadasalam & Ors [1990] 1 CLJ 810; [1990] 2 CLJ (Rep) 893
I *HC* ***(refd)***

Re a Firm of Solicitors [1996] 3 WLR 16 ***(dist)***

Re Kandan Padayachi AIR [1938] Mad 873 ***(refd)***

Rhina Bhar v. Malaysian Bar [1994] 1 CLJ 291 HC ***(refd)***
Syarikat Pengangkutan Sakti Sdn Bhd v. Tan Joo Khing [1997] 3 CLJ 754 HC ***(refd)***
Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd [2003] 2 CLJ 177 CA ***(refd)***
Tuan Hj Ahmed Abdul Rahman v. Arab-Malaysian Finance Berhad [1996] 1 CLJ 241 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 3
Federal Constitution, art. 5(3)
Legal Profession Act 1976, s. 94(3)(n)
Legal Profession (Practice and Etiquette) Rules 1978, rr. 3(b)(i), 3, 4, 5, 16, 28(a)
Rules of the High Court 1980, O. 56 r. 1

For the plaintiff - N Ramesh; M/s Baljit & Assoc
For the defendant - HC Tee; M/s Tee & Partners

Reported by Usha Thiagarajah

JUDGMENT

Rohana Yusuf J:

[1] This is an appeal by the defendant in encl. 24 against the decision of the learned senior assistant registrar (SAR) who has allowed the preliminary objection raised by the plaintiff against Messrs Tee & Partners representing the defendant, on the ground of conflict of interest.

Brief Facts

[2] Encik Tee Han Cheong, a solicitor practising as a sole proprietor in the firm named and styled Messrs Tee & Partners, acted for the plaintiff in the preparation of a settlement agreement with the defendant. The settlement agreement was in respect of a settlement between the parties in relation to the sale and supply of cement by the plaintiff to the defendant from May 2000 to December 2004. On 26 July 2004, the defendant entered into the settlement agreement to settle part of the outstanding sum due to the plaintiff in the form of two units of shop lots. The plaintiff is now suing the defendant for a sum of RM1,139,579.81 being the balance outstanding under that settlement agreement. The same solicitor, Encik Tee Han Cheong, is now acting for the defendant

in the present suit. The plaintiff raised objection on it and was allowed by the SAR. Dissatisfied, the defendant is now appealing in encl. 24.

Decision Not Appealable

[3] First, learned counsel for the plaintiff, Encik N Ramesh, raised a preliminary issue that the ruling by the learned SAR is not appealable as it does not constitute decision that can be appealed as stipulated under s. 3 of the Courts of Judicature Act 1964. Encik Ramesh submitted that the ruling by the SAR in allowing the plaintiff's objection against Encik Tee representing the defendant, does not finally dispose of the rights of parties. He relied on the decision of the Appeal Court in *Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd* [2003] 2 CLJ 177. The Court of Appeal held that any ruling made in the course of a trial which does not finally dispose of the rights of parties does not constitute a 'decision' that can be appealed. The Court of Appeal finds that the ruling of the registrar on the admissibility of documents in that case was unappealable. I have difficulty in accepting the contention of Encik Ramesh. I am more in agreement with the submission of learned counsel for the defendant that under O. 56 r. 1 of the Rules of the High Court 1980 (RHC), "an appeal shall lie to a judge in chambers from any judgment, order or decision of the registrar." As submitted by Encik Tee, the decision of the SAR is appealable because under O. 56 r. 1 of the RHC an appeal can be made to a judge in chambers from any judgment, order or decision. The terms "judgment, order or decision" are not qualified to only decisions that can dispose of the rights of parties. In fact they are not qualified in any way. Thus, it is clear that the decision by the SAR herein is therefore appealable under the said O. 56 r. 1 of the RHC. Furthermore, an appeal to a judge in chambers is a rehearing and is treated as though it comes before the court for the first time, as decided in the Federal Court case of *Tuan Haji Ahmed Abdul Rahman v. Arab-Malaysian Finance Berhad* [1996] 1 CLJ 241.

[4] More importantly, as submitted by Encik Tee, the learned SAR's decision relates to the right to consult and be defended by a legal practitioner of choice, which is a right granted by art. 5(3) of the Federal Constitution. The decision of the late Anuar J (who went on to become the Chief Justice of Malaya) in *Rhina Bhar v.*

Malaysian Bar [1994] 1 CLJ 291 subjects that constitutional right to counsel of one's choice under art. 5, only to practical limitations. I agree with Encik Tee that because the issue relates to such an important right, it should be disposed of at the outset of the trial as it may otherwise embarrass the parties and prejudice the whole process. Based on these reasons it is my finding that the decision of the learned SAR on the plaintiff's objection is appealable to a judge in chambers.

Conflict Of Interest And Solicitor As Witness

[5] The plaintiff is objecting to Encik Tee and the firm of Messrs Tee & Partners representing the defendant in this action on the two main grounds of conflict of interest and the solicitor being a potential witness. Encik Ramesh contends that having acted as plaintiff's counsel Encik Tee was privy to confidential information obtained whilst preparing the settlement agreement. That settlement agreement is a crucial and important piece of evidence which forms the basis of the plaintiff's claim. The contents of the settlement agreement may be in dispute and Encik Tee, being the solicitor who drafted the agreement and advised the plaintiff thereon, may have to testify in the present suit on behalf of the plaintiff.

[6] Encik Ramesh submits and contends that Encik Tee has also placed himself in a position of conflict of interest by representing the defendant in this suit, having previously acted for the plaintiff in a transaction which goes to the root of the matters in the current dispute.

[7] Encik Tee, however, argues that under r. 3(b)(i) of the Legal Profession (Practice and Etiquette) Rules 1978 ("Practice and Etiquette Rules"), an advocate should not accept a brief only if he finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter. Also according to him, by r. 28(a) of the Practice and Etiquette Rules, an advocate and solicitor shall not appear in court in a case where he will be a witness in respect of material and disputed questions of fact. It is also his submission that the plaintiff has not discharged the onus of: disclosing and particularising the confidential information said to be in his possession; how relevant that confidential information is to the present suit; and the real risk of it being used to prejudice the plaintiff. He also submits that the plaintiff has not shown how he

would potentially be called to testify as a witness of material and disputed facts. Accordingly, it is Encik Tee's view that he is not in breach of rr. 3(b)(i) and 28(a) of the Practice and Etiquette Rules.

[8] He further contends that the court should be slow in interfering with the right of a party to be represented by a counsel of his choice unless a strong case to the contrary is made out. He cited the case of *Rhina Barr* in support of this contention.

Findings And Decisions

Counsel As Witness

[9] Let me first deal with the issue of Encik Tee as a potential witness. From the facts and circumstances of this case, it is not disputed that Encik Tee acted for the plaintiff in the preparation and drafting of the settlement agreement dated 26 July 2004. In the exercise of such nature, the plaintiff would have disclosed information privy to the counsel drafting and perhaps negotiating on behalf of the plaintiff. The communication between a client and his counsel is regarded as a privileged communication and should not be disclosed to any other person. Looking at the involvement of the Encik Tee, I have no doubt that the plaintiff's concerns are valid. It is quite conceivable that Encik Tee, as the former solicitor, would have been privy to and would have acquired confidential information in that assignment. The plaintiff's claim in the present suit is predicated on that same settlement agreement. Potentially therefore, Encik Tee may have to be called as a witness for the plaintiff in the dispute over that agreement as disclosed in the statement of claim.

[10] Rule 28(a) of the Practice and Etiquette Rules, prohibits counsel to act in a case where he will be a potential witness of material dispute of facts. The rule consists of two limbs. Under the first limb, an advocate and solicitor should not appear in court or in chambers for a case in which he has reason to believe that he will be a witness. Under the second limb he should also discharge himself if, while appearing it becomes apparent that he will be made a witness.

[11] A quick summary of decided cases on this point are found in *Public Prosecutor v. N Vengadasalam & Ors* [1990] 1 CLJ 810; [1990] 2 CLJ (Rep) 893. There, the late Lim Beng Choon J thoroughly examined a number of Indian cases on the subject.

The Indian decisions (*Re Kandan Padayachi* AIR [1938] Mad and 873 *Emperor v. Dadu Ramu* AIR [1939] Bom 150 I) generally hold that it is undesirable for an advocate to appear as counsel in a trial where he is required to be a witness of material dispute of facts. It must be noted that all the cases considered by Lim Beng Choon J involved counsel representing accused persons and identified to be prosecution witness. In the case before him, His Lordship lifted the injunction order restraining Mr S P Annamalai (now deceased) from acting as a defence counsel on the ground that the prosecution had not made out a good case regarding Mr S P Annamalai being a material witness. The submission by the prosecution that he could be a witness was founded on the fact that a statement had been recorded from him in the course of investigation. This was held to be insufficient to restrain him from acting as counsel for the defence in that case. However, having arrived at that decision, His Lordship expressed some caution and hoped that Mr Annamalai should nevertheless reconsider whether it would be wise for him to continue defending his client. Lim Beng Choon J further remarked that, in the event his evidence turned material, Mr Annamalai would have to retire, his client would then be left in a lurch and, worse still, Mr Annamalai may find himself open to a charge of misconduct.

[12] Abdul Malik Ishak J (now JCA), in the case of *Syarikat Pengangkutan Sakti Sdn Bhd v. Tan Joo Khing* [1997] 3 CLJ 754, referred to that same decision. In that case, Abdul Malik J barred Mr Gana Muthusamy from representing the plaintiff because he held that Mr Gana Muthusamy would jeopardise his client's interest when it had become apparent that he would be a witness. Mr Gana Muthusamy was involved in a dispute between the plaintiff and the defendant when the plaintiff sent his car for repairs at the workshop of the defendant. Some dispute arose between the parties and the plaintiff sought the assistance of Mr Gana Muthusamy to resolve it but this failed and finally led to the suit. The defendant wanted Mr Gana Muthusamy to be the defendant's witness in that dispute but Mr Gana Muthusamy was representing the plaintiff.

[13] Returning to the present case before me, from the facts presented, Encik Tee was involved in arriving at a settlement agreement which he drafted and advised the plaintiff on. The situations in all the decided cases above are quite different and can be easily distinguished. In all the above cited cases, the counsel had never acted for any party in the respective cases and

A they were potential witness not by virtue of having acted for the other party. In *Public Prosecutor v. Vengadalasam & Ors* and all the cited Indian cases the counsel's statement has been recorded to render him to be potential witness. In the *Syarikat Pengangkutan Sakti*, the solicitor acting for the plaintiff was dragged into the B dispute when he went to the defendant's workshop to try to persuade the defendant to release the motor van of the plaintiff.

[14] In my view, Encik Tee's role in the settlement agreement would in all probability potentially make him a witness of material C and disputed question of facts. I would rely on the first limb of r. 28(a) to say that, given the circumstances of the present case, I find that this is a case in which "an advocate and solicitor has reason to believe that he will be a witness in respect of a material and disputed question of fact". I would pose that same question D as Abdul Malik Ishak J did in the *Syarikat Pengangkutan Sakti* and Lim Beng Choon J in *Public Prosecutor v. Vengadalasam & Ors.* that is; in the event Encik Tee has to testify, who would cross examine him on behalf of his client. Quite obviously Encik Tee should have reasons to believe that he will be a material witness as envisaged E under r. 28(a). For this reason alone, I would allow the objection of the plaintiff.

Conflict Of Interest

[15] Quite apart from Encik Tee's role as a potential witness in F this case, I also find that he has put himself in a position of conflict of interest. Before proceeding any further, I would like to pause here to reflect on what would have come to the minds of the representatives of the plaintiff's company upon realising that the same lawyer who advised them previously is now on the other G side of the table. The plaintiff would have taken him into full trust and confidence and would have disclosed to him all information required in the transaction with the defendant, with the hope that their interest was protected, not knowing that he would subsequently be with the adversary. As an advocate and solicitor H who is also an officer of the court, Encik Tee should act with the utmost good faith and decorum towards his client. The question is, is he doing this to his erstwhile client, the plaintiff? Can he be said to be upholding the interest of his client as envisaged in the following r. 16 of the Practice and Etiquette Rules:

I

> An advocate and solicitor shall while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interest of his client, the interest of justice and dignity of the profession without regard to any unpleasant consequences either to himself or to any other person.

In upholding the interest of his client a solicitor is under an absolute obligation not to disclose confidential information which has come to his knowledge as a solicitor for his client. Encik Tee in his submission argues that the fact that he represented the plaintiff does not necessarily mean that he would definitely be in conflict with his former client. He contends that the plaintiff holds the burden of having to satisfy the court with the particulars of the confidential information that he is in fact in possession of, whether the information is relevant or not and the real risk of it being used to prejudice the plaintiff. According to him, the plaintiff has failed to discharge such burden. He relies as an authority on the English case of *Re a Firm of Solicitors* [1996] 3 WLR 16.

[16] That case involved a big firm of solicitors in a substantial suit on an international patent litigation in the United States. It was established in evidence that, although confidential information was available to the counsel when he was with the firm that represented the plaintiff, none of the information in the case had been communicated to him. The counsel in fact stated in evidence that he had never received any confidential information on the case in the former firm. He was not the counsel handling the case as there were ten partners in charge of patents in that firm. He later moved to a new firm at the point he represented the defendant. The court in *Re a Firm of Solicitors* observed and attached weight to the evidence of the solicitor who testified on oath that he had no knowledge of the subject matter of the suit nor had he received any confidential information for the same. It was in these circumstances that the court refused injunctive relief. It was also in these circumstances that the court required the plaintiff to prove the passing of information and to establish real risk on evidence.

[17] Encik Tee is a sole proprietor and cannot defend himself on the basis of *Re a Firm of Solicitors*. He is in no position to testify that no confidential information had passed to him in the same way the solicitor did in that case.

[18] In the case of *Aetna Universal Insurance Sdn Bhd v. Ooi Meng Sua* [2001] 3 CLJ 1 Gopal Sri Ram JCA made an observation on the conduct of counsel at the end of his judgment. He noted that when the dispute between parties first arose in that case, the solicitors for the defendant acted for the plaintiff but did not appear for any party at trial. On appeal, the counsel appeared for the defendant despite having taken instruction from the plaintiff. I share the view and sentiment expressed by His Lordship's when he made the following observation:

> Just because the plaintiff's present solicitors lacked the initiative to take the point does not mean that what was done was right. It was plainly wrong … The defendant's solicitors were privy to confidential information given to them by their erstwhile client, the plaintiff. The fact that they did not use that information against him by appearing against him at the trial is irrelevant.

[19] In the present case, not only had the plaintiff raised objections before the SAR at the outset of the proceedings, the defendant was insistence, dissatisfied with that decision of the SAR and raised it as an appeal before me.

[20] When s. 94 of the Legal Profession Act 1976 empowers the disciplinary board to strike a solicitor off the Rolls for misconduct, s. 94(3) defines misconduct to include "disregard of a solicitor's client's interest" (see s. 94(3)(n)). In my view, Encik Tee is faced with a situation in which he has to choose between the conflicting interest of his former client and his present client.

[21] Further more, it is useful to note the following relevant Rules on this issue r. 3 of the Practice and Etiquette Rules provides as follows:

> Rule 3
>
> (a) Advocate and solicitor shall not accept a brief if he is or would be embarrassed.
>
> (b) An embarrassment arises:
>
> (i) where the advocate and solicitor finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter;
>
> (ii) where there is some relationship between him and a party or a witness in the proceedings.

There is also r. 4 which states that:

> No advocate and solicitor shall accept a brief in a case where he knows or has reason to believe that his own professional conduct is likely to be impugned.

and then r. 5 which provides:

> (a) No advocate and solicitor shall accept a brief if such acceptance renders or would render or would render it difficult for him to maintain his professional independence or is incompatible with the interest of the administration of justice.
>
> (b) (i) An advocate and solicitor who has at any time advised or drawn pleadings or acted for a party in connection with institution or defence of any suit, appeal of other proceedings shall not act appear or plead for the opposite party in that suit, appeal or other proceedings.

[22] In the face of the clearly worded rules above, it is difficult to imagine how Encik Tee has not run foul of any of the above provisions. The above rules are clear on the point and they are designed to prevent a situation of conflict of interest. They are not intended to be given some technical interpretation such as whether the prohibitions in those rules are only in respect of accepting briefs or actually appearing in court. It would not matter that it refers to accepting briefs only; the intention is crystal clear, a conflict of interest situation must be avoided, professionalism and dignity of the profession must be maintained.

[23] That said, I am mindful of the guaranteed right to counsel under art. 5(3) of the Federal Constitution as it has been raised by Encik Tee, a couple of times in the course of the proceedings. In the *Rhina Bhar*'s case, Anuar J had carefully weighed the interest of the plaintiff and her right to counsel of her choice. He held that, as a general rule, a solicitor who is a member of a public authority should not be professionally engaged in proceeding to which the authority is a party. According to him, even if the Bar Council can be equated with a public authority, the Bar Council was not directly involved in the case as it never intervened in the proceedings at the High Court. Furthermore, the plaintiff stated on oath that it was impossible for her to find alternative counsel of standing to present her appeal and it would therefore cause her great hardship if the court allowed the objection to her counsel at the appeal stage. This is true when

A the Bar Council in that case did not raise any objection in the court of first instance. Having weighed and balanced the interest of the Bar Council with that of the plaintiff, the court found that the plaintiff would be seriously prejudiced if denied the counsel of her choice at that stage, as the case involved her whole career. B The plaintiff's right to counsel of her choice was then given precedence.

[24] The defendant in the present case does not insist on the right to counsel of its choice for the same reasons as stated in C *Rhina Bhar*'s case or for any other good reason. Also, there is no evidence that the defendant cannot find another counsel to handle this matter given that the objection was already raised by the plaintiff from the very beginning.

D **[25]** The underlying objective of the guaranteed right to counsel under art. 5, is to assure fair trials to parties. Needless to say, such objective cannot be achieved if the defendant is insistent upon its right to counsel of its choice in the present situation.

[26] To my mind this is plainly a case of a conflict of interest. It E disturbs me much (to say the least) to see that this is happening in the legal profession. Even worse, the matter is being brought before the court for unnecessary adjudication. If the Practice and Etiquette Rules are given due considerations to its true intendment both in their form and substance, Encik Tee would surely be able F to appreciate the gravity of the objections raised by the plaintiff. Even without those rules, basic conscience, professionalism, integrity and common sense would dictate that it is indeed wrong for the counsel to have conducted himself in the manner that he did. Avoiding a conflict of interest is expected in every profession G but is even more so demanded in the profession that is sworn to uphold justice. As aptly observed by Gopal Sri Ram JCA above it should even be disclosed without having to be raised.

[27] In conclusion, I find that Encik Tee is not only a potential H witness in respect of material and disputed question of fact in this suit but he has also allowed himself to be placed in a conflict of interest situation. For these reasons, I hereby dismiss the defendant's appeal in encl. 24 with costs.

I **[28]** Before I end, it would be appropriate for me to make this observation. In the wake of calls for judicial reforms by the Bar Council and other interested parties that grace our local media almost everyday, the least that one can expect is for each and

every member of the Bar to strive to do his or her utmost to boost the confidence of the public in the system of justice in this country. Since their conduct also shapes how the public perceives the system of justice in the country, they should adhere to the highest standards of ethics. Otherwise, calls for judicial reform from the legal profession would lack credibility and may ring hollow with hypocrisy.